

## **Texas Civil Procedure**

One of the fundamental areas of the Texas bar exam is the subject of Texas Civil Procedure. And one of the fundamental areas of Texas Civil Procedure is jurisdiction. The two major provisions of jurisdiction are subject matter jurisdiction, and personal jurisdiction. Subject matter jurisdiction is the court's power to hear a specific case, whereas personal jurisdiction is the court's power over a party to the action, or such a party's property. This is not to be confused with venue, which concerns the proper placement of a case within the judicial system.

Therefore, when examining subject matter jurisdiction, there are two basic questions to be answered to determine whether a court has subject matter jurisdiction. First, is whether the type of case or relief sought is a type that requires the case to be filed in a particular court or set of courts. Second, if not, what is the amount in controversy?

Amount in controversy is the amount prayed for by the plaintiff in his or her petition. Each of the Texas courts have limits for the amount in controversy. For justice courts the limit is \$10,000. For constitutional county courts the limits range between \$200.01 to \$10,000. For County Courts at law, or legislative county courts the limits range between \$200.01 to \$100,000; and for district courts the minimum is \$500.00 with no upper limit.

For personal jurisdiction there are two main issues to be considered. First, is whether there is a sufficient basis for the exercise of jurisdiction, and the second, is whether the defendant had received proper notice. There are four adequate grounds for personal jurisdiction that must be addressed. First is physical presence; Second, domiciliary of the state must be shown; Third, consent to jurisdiction; or fourth, minimum contacts.

In order for the defendant to have proper notice, personal service must be accomplished. This can be done through personal delivery or via registered or certified return receipt requested mail. There are other means of service of process as well. These include, substitute service; citation by publication; and service on a corporation. Another consideration for personal jurisdiction is the long arm statute. For the long arm statute it must be shown that: One, the defendant must be a nonresident; two, the defendant must have no regular place of business in Texas; three, the defendant must have no registered agent in Texas; four, the defendant must have been doing some sort of business or transaction in Texas to avail him or herself of Texas Law.

The plaintiff must comply with the statute of limitations, which only

begins to run after the plaintiff has exercised actual diligence. The defendant has until Ten in the morning on the first Monday after twenty days from receipt of summons; in federal law it is a mere twenty days.

If the defendant wants to challenge the jurisdiction of the court he or she must file a special appearance before any other plea, pleading, or motion is filed by the defendant. Otherwise, the defendant consents to the jurisdiction. However, this is not the case for mere request for discovery.

A special appearance should assert that the defendant is not amenable to service of process, and it must deny the allegations asserted against the defendant. Furthermore the special appearance needs to be verified.

If a party believes that there are defective jurisdictional allegations, or defects in the service of process, then the party, usually the defendant, must file a motion to quash. If such a motion is granted the defendant need not be re-served.

Once it is determined whether the courts have jurisdiction, and are within the amount in controversy requirement, the next determination to be made is whether the formal requirements for a petition have been satisfied. The formal requirements of a petition are. First, that it includes the names of the parties as well as their residences, second, that it state the cause of action. Third, if there are unliquidated damages, it must contain a statement that all damages are within the limits of the court. Fourthly, it must demand judgment for all other relief deemed entitled; and fifthly it must be signed by the party or the party's attorney. If the petition lacks one of these provisions, it is not necessarily fatal to the case, the party can file what is known as a pretrial amended pleading which supersedes the prior pleading, and must be complete in and of itself. However, if this is to be filed within seven days of trial, then the party seeking a pretrial amendment must obtain leave of court to amend. Furthermore a motion to file an amended pleading for trial should be granted unless the defendant proves surprise or prejudice resulting therefrom.

Another motion that can be brought is the supplemental pleading, which is used to reply to defenses raised by the defendant. A supplemental pleading adds to, but does not supersede the last pleading. Another type of pleading is a verified pleading on a sworn account. To be valid, it must include an itemized statement of the goods or services sold, it must reveal offsets to the account, and must be supported by an affidavit stating that the claim is just and true and within the affiant's knowledge.

If this is filed against a defendant, the defendant may defend against such a pleading with a written denial under oath. Sometimes, however, the purpose is not to seek money, but an equitable remedy of injunction. To prove the right to injunction a party must plead and prove that, first, there is a probable right to relief; second, that there is probable injury; third, that harm is imminent; fourth, that without the injunction, the harm will be irreparable; and fifthly, that there is no adequate remedy at law.

In some cases, a temporary restraining order is sought, in order to achieve this, the application must be verified, and the party obtaining the temporary restraining order must post a bond in favor of the adverse party.

The next major consideration is the proper geographical location of the case. This is known as venue. Venue must be in the county in which all or a substantial part of the events, or omissions giving rise to the claim occurred; or in the county of the defendant's residence or principal office; or if none of the above, then in the county where the plaintiff permanently resides. When there are multiple defendants, venue is proper wherever it is proper for any single defendant.

There are two permissive venue exceptions of primary concern. First, the consumer good warranty breach, where action may be brought in the county of plaintiff's residence at the time the cause accrued. Second, is a suit on a written contract, which can be brought in the county where the defendant was to perform the contract.

Sometimes venue is challenged, and a party will file a motion to transfer venue. This must be filed before any other plea or pleading has been filed, other than a special exception. Furthermore, if there are multiple defendants, and one of the defendants files a pleading other than a motion to transfer venue, the other defendants may still file a motion to transfer venue.

A motion to transfer venue must assert four things. First, that the action should be transferred to another specified county of proper venue; second, that the current county is not proper or that venue is more convenient in another county; third, that legal and factual basis for the transfer are included; and fourth, a request for a transfer to a specific county. The defendant carries the burden of proof on a motion to transfer venue. Furthermore, a motion to transfer venue must be accompanied by supporting affidavits. Also, a motion to transfer venue does not need to be verified. A motion to transfer venue must be given in 45 days, except on leave of court in order to give the opposing party proper notice of such intent. At which point the plaintiff must file a response at least 30 days prior to the hearing on the motion.

Another motion concerning venue is the motion to change venue. Such motions must show that: One, the defendant's affidavit, and affidavits of three credible persons who are residents of the county of the suit are present; Second, the affidavits themselves must assert that there is such a prejudice against the defendant such that the defendant cannot obtain a fair and impartial trial. A motion to change venue can be filed at any time.

If the defendant wants to challenge the plaintiff's pleadings by alleging facts which arise outside of the petition justifying the suspension of, or dismissal of the case; then he or she must file a plea in abatement. A plea in abatement must be based upon: one, a defect in the parties, such as capacity, non-joinder, or there is an improper party; and two, a defect in the petition's allegations, such as another action is already pending.

If either party wish to object to the other parties' pleadings, the objecting party must file a special exception. Special exceptions are based upon defects of substance or form.

Defendants are also allowed to file a general denial in response to a plaintiff's pleadings. In other words, the defendant denies each and every allegation contained in the plaintiff's original petition. If the defendant wants to challenge a plaintiff's assertion that a condition precedent has been performed, or has occurred, then the defendant must file a special denial. There are also four affirmative defenses that must be verified. First, denial of plaintiff's properly filed sworn account action; second, denial that the defendant is either a partnership or corporation, or other business entity; third, that there is another suit pending in Texas with the same parties and similar or same claim; and four, that a defect of parties is present.

An affirmative defense is any matter which provides an independent reason that will either totally or partially bar the plaintiff from recovering, whether or not the allegations are true.

Sometimes a defendant may desire to remove a case to federal court. Only the defendant can file to have the case removed to federal court, and if there are multiple defendants, then each and every one of them must join in the removal. A case can only be removed if it could have been filed in federal court originally.

There are two primary ways in which a case can be brought into federal court. The first is diversity of citizenship. For such an action to be possible, the parties must be completely diverse, and the amount in controversy must exceed \$75,000. Complete diversity requires that each plaintiff be diverse from each defendant.

Therefore citizenship of each party must be determined. For individuals this is determined by domicile; and for corporations, this is determined by the state of incorporation, and the state in which the corporation's principal office is located, in other words, the nerve center, or primary place of business. Note, however, if there is complete diversity of citizenship, and at least one defendant is a citizen of the forum state, then removal is not allowed. For diversity of citizenship removal must be filed one year from commencement of action.

The steps for removal are: One, defendant must file a verified notice of removal in federal court, signed under Federal Rules of Civil Procedure rule 11. Two, notice must contain a short statement of why the case can be removed. Third, the motion must be filed within 30 days after state service. Four, it must give written notice to all adverse parties and be filed with state court. If the defendant did not file an answer in state court, before filing a notice of removal, the defendant must answer in federal court within 20 days after receipt of the initial state court pleading, or within 5 days after filing the notice of removal, whichever period is longer.

Plaintiff challenges a defendant's motion for removal by filing a motion to remand to state court. The plaintiff must allege in such a motion that the case could not have been originally brought in federal court, or that there was a defect in the removal procedure. This motion must be filed within 30 days if it is based upon a defect in procedure. Otherwise it may be filed at any time before final judgment is had.

There are times when the plaintiff, for judicial economy reasons may want to join the claims the plaintiff has against the defendant, even if such claims are not related. A plaintiff may use permissive joinder of claims against a single defendant, even when the causes of action are totally unrelated. A defendant may also use permissive joinder of claims when he or she sets forth counterclaims.

A counter claim can be compulsory when: One, it is within the jurisdiction of the court; two, is not the subject of a pending action; three, arises out of the same transaction or occurrence as the one in question; four, is a claim that the pleader has a time of filing; five, does not require the presence of third parties over whom the court cannot acquire jurisdiction. If a compulsory counterclaim is not asserted the subject matter therein will be barred.

A permissive counterclaim on the other hand can be filed in the same suit or in a second suit against the plaintiff. This is different

than a cross claim which is a claim by one party against a co party. A cross claim must arise out of the same transaction or occurrence that is the subject matter of the original action. A cross claim is generally permissive as opposed to compulsory.

A party wishing to sever the claims may do so when the controversy involves multiple claims, one of which could be asserted in a separate suit and does not involve the same facts and issues as in the other claims.

A bifurcated trial is ordered when there are distinct and complex issues that, if tried together, might cause confusion for the jury. An example would be claims for both actual and punitive damages in the same action.

Sometimes it is necessary not just to have a joinder of claims, but also a joinder of parties. For permissive joinder of parties there must be: One, a claim for or against the party asserted jointly, severally, or in the alternative. Two, claims are asserted which arise out of the same transaction or occurrence. Three, there are also common questions of fact and law. If the defendant believes that a third party is at fault, then the defendant may file a third party claim alleging that the third party is liable for all or part of the original claim. This must be filed within thirty days of serving the original answer, or the defendant must obtain leave on motion stating the claim, basis, and relationship to the primary claim, and give notice to all parties.

Sometimes the joinder of necessary parties is required. This is called compulsory joinder of parties. A common example is when there are persons who have a joint interest in the subject matter of the lawsuit, but who are not parties. There are also times when a non-party has interests in the case at bar that they feel they need to protect. In such cases the party may file a motion to intervene which allows the party to voluntarily seek to become a party in the suit in order to protect rights or interests of his or her own.

When there are too many parties to practically bring a claim with joinder of claims or intervenors, then a class action may be sought. For a class action to be brought the class must be certified. The first class of requirements to certify a class action require: one, the class be so numerous that joinder of all parties is impractical; two, questions of law or fact are common to the class; three, claims or defenses of the representative parties are typical to the class; and four, representative parties will fairly and adequately represent the interests of the entire class.

The second requirement to certify a class action includes one of the following three: One, prosecution of separate actions would create a

risk of inconsistent adjudication; two, the party opposing the class has acted or refused to act on grounds generally applicable to the class; and three, the court finds that common questions predominate the issue and that class action is superior to any of the other methods of adjudication.

The process where the parties examine the evidence of the other party is none as discovery. Any matter which is not privileged and is relevant to the case at bar is discoverable. A party cannot object that the evidence will be inadmissible at trial. This is because if the information appears reasonably calculated to lead to the discovery of admissible evidence, it is discoverable. Furthermore, trial witnesses must be disclosed, however, impeachment or rebuttal witnesses need not be, however the party withholding such witnesses must show good cause for nondisclosure, or that the opposing party will not suffer prejudice or surprise therefrom. Any tangible things or documents within the person's possession, custody, or control must be produced upon request.

In regards to expert witnesses there are three classifications. First, testifying witnesses of expertise; second, consulting expert witnesses who will not testify; and third, reviewed consulting expert witnesses. Note that there are certain things which are not discoverable with respect to purely consulting experts. That is the identity, mental impression, and opinions thereof. For testifying or reviewed testifying experts the following five things are discoverable. One the identity of the expert; two the subject matter of the testimony; three, the mental impressions and opinions; four, documents prepared in anticipation of testimony; and five, evidence of bias of the witness.

The time limits to respond to requests for disclosure regarding experts is as follows. For parties seeking affirmative relief, it must be responded to in 90 days before the end of the discovery process. For other parties the limitation is 60 days. When a party seeking affirmative relief must make their experts available for deposition reasonably and promptly after designation. That is unless a report concerning expert witnesses' opinions and observations is provided to the opposing party.

Work product is generally not discoverable. Work product is any material that is prepared in anticipation of litigation or for trial by or for a party or a party's representative. This also includes mental impressions developed for such reasons.

In order to claim privilege as a basis for refusing to respond to interrogatories, the party must first file a withholding statement, which states that the information has been withheld, for which request was made, and it must state the privilege asserted. The

second step to claim privilege as a basis for refusing to respond to interrogatories is the response. That is the party seeking discovery may request that the withholding party identify the information that is withheld. The third step is the privilege log, which within fifteen days, the withholding party must describe the information or materials being withheld, and then must assert a specific privilege. They must also establish a prima facie case for the privilege by testimony or affidavit. The objecting party has the burden of proof for the validity of the objections to the interrogatories based on privilege.

Where the court orders that a party answer a question which the party believes is barred via privilege, that party must seek a writ of mandamus. If the defendant inadvertently discloses privileged information, the privilege is not waived as long as within ten days of discovering that the production was made, the party amends the response and states the privilege asserted.

A party may object to discovery in two ways. First, make objection in writing within time for response, otherwise the objection will be waived. Two, state the legal or factual basis for the objection, which must be done in good faith. A party may seek a protective order in discovery to ask that the discovery be limited in the interests of justice to protect the party from undue burden, unnecessary expenses, harassment, or annoyance. The time limits for supplementing discovery must be done reasonably and with promptness, which means not less than thirty days before trial, otherwise, the supplementation is presumed unreasonably delayed (that is not prompt).

There are three levels of discovery plans. A level 1 discovery plan is: One, a plan in which duration begins when the suit is filed, and ends thirty days before trial; two, that has no more than six hours of deposition time, but the parties can agree to expand that time up to ten hours per witness; and three, in which no more than twenty-five interrogatories are allowed. The ceiling for relief of a level 1 plan is \$50,000.

The duration of a level two plan, starts when the suit is filed. It continues until either thirty days before trial or nine months after the earlier of the date of first deposition being due, or the due date of the first response to discovery which ever is longer. The deposition limitations of a level two plan are no more than fifty hours for opposing parties, their experts, and people under their control, plus six hours for every expert beyond two. There are no limits for parties not under their control. The interrogatory limit under a level two plan is twenty-five.

A level 3 discovery plan applies when a court orders it either on motion or on its own accord (sua sponte). If the time limit for a

deposition has expired, then the party or the witness may suspend the deposition.

There are four types of information which may be obtained using a request for disclosure. One, correct names of the parties. Two, names, addresses, and telephone numbers of potential witnesses. Three, legal theories and general factual basis of responding party's claims or defenses. Four, the amount and method of calculating damages. Furthermore witness statements, and settlement agreements may also be included.

The means by which a party must respond to a request for disclosure includes. For the plaintiff, thirty days after service of request; for the defendant thirty days, except when the defendant was served with requests before the answer was due, in that case fifty days. The purpose of a request for production is to obtain documents. When this involves non parties a subpoena is required. A party gets thirty days, except for defendants served before the answer is due who get fifty days, to respond to a request for production. Production of a document authenticates a document for use against a producing party except when the producing party objects within 10 days after receiving knowledge that the document will be used.

There are limits on testing items produced. The item may be obtained, but the item may not be destroyed, or materially altered unless the court previously authorized such conduct. In order to gain entry to property a request or motion for entry must be filed. The standard response times are the thirty days for plaintiff, or fifty for defendants who were notified before the answer was due.

Interrogatories are written questions to a party in the suit. The answers must be used only against that party, and must be signed under oath. Requests for admissions are requests that the other party admit the truth of any matter within the scope of discovery. A responding party must answer admissions either by specifically admitting or denying the admissions, or explain in detail why the request cannot be admitted or denied. The limits for responses to admissions are the 30/50 rule. Untimely responses deemed admitted. The effect of admissions are that a matter admitted is conclusively established as to the party making the admission. A party may withdraw admissions by leave of court, if the party shows good cause and the court finds that parties relying on the admissions will not be unduly prejudiced by both actual and deemed admissions.

Notice of intent to take oral depositions must be served in a reasonable time before the deposition is to be taken. The notice of intent must contain the name of the deponent; a reasonable time and place for the deposition to occur; and in the case of corporate deponents, the request need not give the name of the deponent, but

may ask the organization to designate.

A deposition may be taken: One, in the county of the deponent's residence; Two, in the county where the deponent is employed; three, the county where the deponent was served with the subpoena; and four, if the deponent is a party, the county where the suit is filed. Appearance is required for a deposition when the county of appearance is not more than one-hundred fifty miles from where the person resides or is served, note that this requirement is not required in criminal procedure. A subpoena for a deposition may also compel production of documents or things at the deposition as the same rules for requests for production apply. A deponent must file a motion to quash or a motion for a protective order if they are to object to the request to produce tangible documents or things. A deposition may be taken by alternative means if the party gives the other party and court reasonable notice thereof.

There are only three objections that are proper at a deposition. One, objection leading; tow, objection form; three objection, non-responsive. An attorney may confer with a deposition witness only to identify a privilege to be protected. When an attorney instructs a witness not to answer during the deposition, in order for that to be proper is when it is necessary to preserve a privilege, comply with a court order, or to protect the witness from abusive questions or questions requiring a misleading answer, there are no other grounds.

A deposition may be taken before suit is actually filed, by the filing of a petition for deposition before suit. This petition must allege: One, anticipation of a suit; Two, the subject matter of the suit and the petitioner's interests thereunder; and three, names and contact information of persons expected to be adverse. The party who hires an expert is the party to pay for the expert witness. If attempts to resolve a discovery dispute have failed then the party must file a motion to compel, or may request sanctions.

A motion to compel a medical exam of another party may be filed after showing good cause for it and that the medical condition is in controversy. This may be filed no later than thirty days before the end of the discovery period. A court may instruct a jury to infer, when a party fails to produce evidence under the party's control and that is reasonably available to such party, that the evidence is unfavorable to the party who could produce it but did not produce it.

If a defendant fails to respond to the pleadings of a plaintiff then the defendant is subject to a default judgment. The plaintiff must show that: One, the court has subject matter jurisdiction; two, that jurisdiction of the defendant is by proper service of process; three, it must allege a cause of action; four, the defendant has not filed an answer and the time to do so has expired; five, a return of

citation has been on file for ten days exclusive of the day of filing and the day of default judgment.

If the plaintiff fails to seek default judgment, the defendant may still file an answer, even if such answer would not be timely. In default judgment all liability issues are admitted, and unliquidated damages must still be proven.

If the defendant desires to set aside a default judgment he or she must: Within thirty days, show that the failure to answer was not intentional or the result of conscious indifference to the judicial process, but rather was a mistake or accident. Further the defendant must show meritorious defense, and that there would be no delay or injury to the plaintiff by granting a new trial. A defendant must show that within six months, the defendant did not participate in the trial court below and did not file any post judgment motion and that there is error on the face of the record, in order to set aside a default judgment by a restricted appeal to the court of appeals.

In order to set aside a default judgment through an equitable bill of review the defendant must, within four years, and in the same court: one, demonstrate a meritorious defense; two, which the defendant was prevented from asserting by fraud, accident, wrongful act of the plaintiff, or official mistake; and three, unmixed with any negligence on the part of the defendant.

If a bill of revive is based on a total lack of service of process, the defendant must prove only that a lack of service happened, as due process requires that traditional requirements be excused. A plaintiff may file a non-suit at any time before the plaintiff has introduced off of its evidence.

The effect of a non-suit is that the case is dismissed without prejudice. There are two standards for summary judgment: one, no genuine issue of material fact; and two, there is no evidence supporting the case at bar. The moving party has the burden of proof to show sufficient conclusive facts that the party is entitled to summary judgment. When summary judgment is for no evidence, the party must show that after adequate discovery time, and after specifically showing that the evidence of one or more essential elements of claims or defenses is not there, entitles the moveant for summary judgment. To avoid non evidence summary judgment the objecting party must show evidence giving rise to a genuine issue of material fact.

The procedure for summary judgment is: One, at least twenty-one days before the hearing, unless leave is granted; two, there is no oral testimony at the hearing; and three, evidence is limited to affidavits and all types of discovery. The affidavits for summary judgment must: One, be made on personal knowledge of the affiant;

two, affirmatively show that the affiant is competent to testify; and three, it must state admissible facts.

For a Rule 11 agreement to be a valid settlement, it must be in writing, signed, and filed as part of the record or be made in open court and entered of record. The court must approve a settlement if a minor is involved. Furthermore, if there is a conflict between a minor and the minor's next friend or guardian, the court will appoint a guardian ad litem.

If a settlement offer is made and rejected, and the judgment is significantly less favorable than the settlement, the offering party recovers litigation costs from the rejecting party. Significantly less favorable in the context of comparing settlement offers and judgment means, for the plaintiff less than eighty percent of the judgment, and for the defendant more than one-hundred-twenty percentum.

The limits on litigation costs for rejected settlement offers are the costs incurred after the date the offer was rejected, including court costs, reasonably attorney's fees, and fees for no more than two testifying experts.

In Texas the time limit to request a jury trial in a civil case is thirty days before trial. For federal civil cases it is any time, but cannot be later than ten days after service of the last pleading directed to a trial issue. The procedure for requesting a jury trial in civil cases is that it must be in writing, with a jury fee or affidavit of inability to pay jury fee. A motion for continuance must be in writing, under oath, and show sufficient cause supported by an affidavit unless all parties agree thereto.

A judge's grant or denial of a motion for continuance will be disturbed by a showing of clear abuse of discretion. A motion in limine is to prevent the opposing counsel from mentioning or asking questions in regards to a matter without approaching the judge for a final ruling. When a party disregards a motion of limine the other party must: one, object timely; obtain an order by the court disallowing the evidence; three, have the court instruct the jury to disregard the statement. This must be done in order to preserve error for appeal.

A jury panel may be shuffled before voir dire, this can only be done once and must be done by the judge.

There are four challenges for a juror for cause; one, the juror is interested in the subject matter of the case; Two, the juror is a witness in the case; three, the juror has a bias or prejudice; four, the juror is related to a party. If a juror has expressed some bias,

that juror is not necessarily disqualified as a matter of law. Additional voir dire may be taken to establish that the person will be fair and objective. In order to preserve error in a challenge for cause, before peremptory challenges are made, the party must state that it will exhaust all its peremptory challenges and that specific objectionable jurors will remain on the list.

Each side is allowed 6 peremptory challenges in district court, and three in county court. If there are multiple parties, the rules are the same unless the co parties are antagonistic on any issue to be submitted to the jury, in which case each party gets six. A Batson challenge is an objection that a jury panelist was excluded because of some prohibited classification such as race, ethnicity, or gender.

Witnesses may be sequestered where the court swears the witnesses on both sides and removes them from the courtroom in order to prevent them from hearing the testimony of the other witnesses. There are exceptions to this rule: One, where parties and spouses are the witnesses; two, officers of non-person parties who are designated representatives; three, a person whose presence is shown by the party to be essential to the presentation of the case. The sanctions for violating this rule include; Excluding the testimony in whole or in part; holding the witness in contempt; and allowing the witness to testify. The standard of review for sanctions arising from violations of this rule is abuse of discretion.

A directed verdict is the method used to present a party's argument that there are no controversial fact issues for the jury's determination. A party may move for a directed verdict when: One, an opponent rests; two, when an opponent closes; three, when all parties close. There are two grounds that a plaintiff must show to successfully move for a directed verdict. That is one, the plaintiff has conclusively proven all elements of one ground for recovery; and two, that the defendant has failed to produce any evidence on one ground of defense. A defendant must prove: One, that the defendant has conclusively proven all elements of one ground of defense, or, two, that the plaintiff has failed to produce any evidence on at least one element of each ground of recovery.

There are two requirements to preserve error on the jury charge. They are: One, that all complaints must be made before the charge is read to the jury and outside of the jury's presence; and two, that all complaints must be ruled on by the judge. There are three steps for objections to submitted but defective matters. One, object to the specific portion of the charge; Two, state the basis for the objection; and three, obtain a ruling.

There are two types of complaints regarding jury charges: Omissions, and submitted but defective matters. The minimum amount of jurors

that must agree on the matter varies depending on the court. For district court, ten out of twelve must agree. For County court five out of six must agree; and for justice of the peace courts, five out of six must agree. Exemplary damages are not available when there is a non-unanimous verdict. A losing party may request a jury poll after the jury returns a verdict. The purpose of a jury poll is to make sure that no juror was coerced and that they made the verdict of their own accord. A judge may disregard a jury's findings when there is legally insufficient evidence to support the jury's findings or where the contrary evidence to the jury's findings is conclusive.

The purpose of a motion for judgment notwithstanding the verdict is: one, to challenge the legal sufficiency of the evidence; and two, to assert that the evidence conclusively establishes a fact opposite to the jury's findings. The time limit for a motion for judgment notwithstanding the verdict is after the court has entered the judgment, but before the judgment becomes final. In an evidentiary bench trial, a party may learn of the basis of the court's decision by requesting that the judge make findings of fact and conclusions of law.

The deadline for a request to make findings of fact and conclusions of law after judgment is rendered in an evidentiary bench trial is within twenty days after the final judgment is signed, and the judge must answer within twenty days after the request.

A motion for a new trial may be asserted upon any alleged error on the part of the trial court. The prerequisite matters for which a motion for a new trial are to be made under are: One, complaint of inadequate or excessive jury damages; two complaint on evidence for jury misconduct, newly discovered evidence, or failure to set aside judgment by default; three, complaint of factual insufficiency; four, complaint that jury findings are against the great weight and sufficiency of the evidence, and five, an incurable jury argument. The time limit for a motion for a new trial to be filed is thirty days after judgment is signed. The time limit of the trial court's plenary power to set aside, modify, or amend the judgment sua sponte, is thirty days following the signing of the final judgment.

A final judgment is a judgment that disposes of all parties and all issues. Interlocutory orders which are appealable include: One, class certification; two, temporary injunctions; three, special appearance, except under cases under the family code; and four, appointment of a receiver or trustee. An appeal is perfected when a written notice of appeal is filed with the trial court clerk.

A notice of appeal must contain: One, the identification of the trial court and the case's trial number and style; two, the date of the judgment or order appealed from; three, a statement that the party

desires to appeal; four, identify the court to which the appeal is taken; and five, a statement of the name of each party filing the notice.

The time limit for an appeal when there is no motion for a new trial is thirty days from the date the judgment is signed, when there is a motion for a new trial the time is extended to ninety days. Perfect an appeal does not suspend enforcement of the judgment pending appeal. In order to suspend enforcement on a judgment pending appeal, a bond must be filed with the trial court. A court of appeals must affirm a lower court when there is no error or when the error is not significant enough to meet the standard for reversible error. The most common disposition of reversed cases is that the case is remanded for a new trial. And a court may reverse the judgment of a trial court and render judgment instead of a new trial at the appellate level.

When mediation is ordered, the court may impose sanctions when there is a refusal to participate, but it may not impose sanctions there is a refusal to settle or to mediate in good faith. A court may compel payment of an appointed mediator as a court cost. The effective time that all parties must consent to a settlement agreement is at the time when judgment is rendered. Statements made in mediation are inadmissible in court, and a mediator cannot be compelled to disclose information, unless the parties agree otherwise.